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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,197	02/06/2004	Norbert Abels	7678.599.1	6975

22913 7590 10/15/2004

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EXAMINER

WILSON, JOHN J

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/774,197	ABELS ET AL.	
	Examiner	Art Unit	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/6/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 7-9, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. While Christoff gives the options of making the base of plastic or ceramic while making the cover of metal, the reference does not specifically teach this. Pletcher teaches a specific embodiment comprising a ligation cover 37 that is made with metal and a base made from plastic, column 4, lines 35-38. It would be obvious to one of ordinary skill in the art to modify Christoff to include using the materials as shown by Pletcher in order to obtain a bracket with the desired properties. As to claim 2, the cover of Christoff is not significantly biased. As to claim 3, the type of hinge used is an obvious matter of choice in known hinges to one of ordinary skill in the art. As to claim 9, see latch at the end opposite the hinge in Fig. 11 of Christoff. As to claim 16, to use a rigid plastic would be obvious to one of ordinary skill in the art in order to apply the desired forces to a tooth.

Claims 4, 13-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further

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in view of Kurz (5857849). The above combination does not show a film hinge. Kurz teaches using a film hinge 22. It would be obvious to one of ordinary skill in the art to modify the above combination to include a film hinge as shown by Kurz in order to make use of known hinge types in the art. As to claim 13, the above combination does not show a spring. Kurz teaches using a spring "C" to urge the cover closed. It would be obvious to one of ordinary skill in the art to modify the above combination to include a spring as shown by Kurz in order to bias the cover to apply the desired forces. As to claim 19, the above combination does not show a cover that substantially covers the upper surface of the bracket. Kurz shows a bracket base 10a as shown in Fig. 1 that has a substantial portion of the upper surface covered by the cover 10b. It would be obvious to one of ordinary skill in the art to modify the above combination to include a cover as shown by Kurz in order to make use of known shapes and sizes for covers in the art.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Voudouris (5474445). The above combination does not show a pin hinge. Voudouris shows a pin hinge 22, Figs. 12-17. It would be obvious to one of ordinary skill in the art to modify the above combination to include a pin hinge as shown by Voudouris in order to make use of known types of hinges in the art to best litigate the arch wire.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Voudouris (5908293). The above combination does not show opening means that urges the

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cover to remain open. Voudouris teaches using opening means that urge the cover to remain open, column 7, lines 7-21. It would be obvious to one of ordinary skill in the art to modify the above combination to include opening means as shown by Voudouris in order to allow for easier access.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Heiser et al (5562444). The above combination does not show a plurality of covered slots. Heiser shows a plurality of covered slots 5, 8. It would be obvious to one of ordinary skill in the art to modify the above combination to include a plurality of covered slots as shown by Heiser in order to ligate all of the wires that are desired to be used with one cover.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. Christoff does not show a film hinge. Kurz teaches using a film hinge 22. It would be obvious to one of ordinary skill in the art to modify Christoff to include a film hinge as shown by Kurz in order to make use of known hinge types in the art. Christoff shows allowing the cover to rotate about the hinge over a substantial angle of rotation. To use a film hinge to allow this movement is an obvious matter of choice in the degree of motion desired to the one of ordinary skill in the art. As to claim 21, Christoff does not

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significantly bias the cover. To use of film hinge that does not significantly bias the cover is an obvious matter of choice in the degree of bias used by the skilled artisan.

Claims 22-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. Christoff does not a cover that substantially covers the upper surface of the bracket. Kurz shows a bracket base 10a as shown in Fig. 1 that has a substantial portion of the upper surface covered by the cover 10b. It would be obvious to one of ordinary skill in the art to modify Christoff to include a cover as shown by Kurz in order to make use of known shapes and sizes for covers in the art. As to claim 24, Christoff does not show a film hinge. Kurz teaches using a film hinge 22. It would be obvious to one of ordinary skill in the art to modify Christoff to include a film hinge as shown by Kurz in order to make use of known hinge types in the art. The specific type of hinge used is an obvious matter of choice in known hinge types to the skilled artisan.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849) as applied to claim 25 above, and further in view of Voudouris (5474445). The above combination does not show a pin hinge. Voudouris shows a pin hinge 22, Figs. 12-17. It would be obvious to one of ordinary skill in the art to modify the above combination to include a pin hinge as shown by Voudouris in order to make use of known types of hinges in the art to best litigate the arch wire.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,607,383 in view of Pletcher (4077126). The claims of the '383 patent do not show a plastic or ceramic base and a metal cover. Pletcher teaches an embodiment comprising a ligation cover 37 that is made with metal and a base made from plastic, column 4, lines 35-38. It would be obvious to one of ordinary skill in the art to modify the claims of the '383 patent to include using the materials as shown by Pletcher in order to obtain a bracket with the desired properties. The specific type of hinge used is an obvious matter of choice in known hinges to one of ordinary skill in the art.

Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,616,444. Although the conflicting claims are not identical, they are not patentably distinct from each other because to

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not use a spring connection would be an obvious matter of choice in not including an element to one of ordinary skill in the art.

Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,659,766. Although the conflicting claims are not identical, they are not patentably distinct from each other because to not use a locking tongue would be an obvious matter of choice in not including an element to one of ordinary skill in the art.

Drawings

The drawings submitted February 6, 2004 have been found to be acceptable by the examiner.

Conclusion

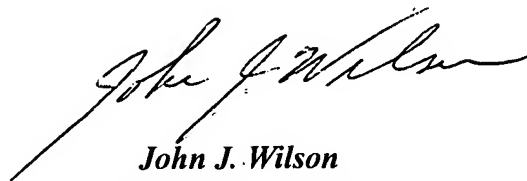
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 703-308-2699, after November 2, 2004, at (571) 273-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at (703) 308-2582, after November 2, 2004, at (571)

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273-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "John J. Wilson", written in a cursive style.

John J. Wilson
Primary Examiner
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jjw
October 12, 2004